



31 July 2013

PRESS SUMMARY

McGraddie v McGraddie and another [2013] UKSC 58

On appeal from: [2012] CSIH 23

JUSTICES: Lord Neuberger (President), Lady Hale, Lord Wilson, Lord Reed, Lord Hughes

BACKGROUND TO THE APPEALS

This appeal concerns a particular application of settled principles which delineate the circumstances in which an appellate court may interfere with findings of fact made by a judge sitting at first instance.

The Appellant (“DM”) and first Respondent (“RM”) are father and son respectively. DM and his wife left Scotland many years ago to live in the United States. RM and his partner (“LG”), who is the second Respondent, live in Scotland with their son. The Appellant and his wife decided to return to Scotland in 2005 when the latter became terminally ill. DM asked RM, who is a property developer, to find a suitable property for him and his wife to live in upon their return. When RM did so, DM transferred the funds required to purchase that property (“the St Helens Gardens property”) to RM’s bank account. RM subsequently arranged the purchase. However, unknown to DM, he arranged for the title to the property to be taken in his own name. DM moved into the property with his wife on 1 January 2006, but she died six days later. In February 2007, DM gave RM a cheque in his favour for £285,000, the reason for which is subject to the dispute which gives rise to this appeal. RM and LG used £200,000 from that amount, together with £90,000 raised by way of a mortgage, to buy a newly built house in Stewarton (“the Lochrig Court property”), taking title in their own names. The remainder of the £285,000 was spent on cars, the repayment of debts, improvement of their existing home prior to sale and finishings for the Lochrig Court property.

DM raised the present proceedings later in 2007 seeking, among other remedies, the conveyance of the two properties to him. He maintained that, first, RM had acted without his authority in taking title to the St Helens Gardens property in his own name and, second, that RM and LG had acted without his authority in taking title to the Lochrig Court property in their names. In relation to the former, RM maintained that DM had instructed that title to the St Helen’s Gardens property was to be taken in his (RM’s) name. In relation to the latter, RM and LG maintained that the payment of £285,000 had been a gift. The case proceeded to proof before the Lord Ordinary, Lord Brodie, in the Outer House of the Court of Session, who found in favour of DM and ordered that the properties be transferred to him.

It was central to the Lord Ordinary’s decision that he preferred the evidence of DM over that of RM on the central issues of fact, finding that DM had not made substantial gifts to RM. RM and LG appealed to the Inner House of the Court of Session in relation to the Lochrig Court property only. Noting that the Lord Ordinary had stated that he did not find any of the other evidence materially to undermine DM’s account, the Inner House identified a number of aspects of the evidence which they asserted did exactly that. They therefore concluded that they were entitled to overturn the Lord Ordinary’s decision on the basis that he had gone “plainly wrong” and to substitute their own decision on the facts from the printed record of proceedings.

JUDGMENT

The Supreme Court unanimously allows DM’s appeal. Lord Reed gives the judgment of the court.

The Supreme Court of the United Kingdom

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REASONS FOR THE JUDGMENT

- The Inner House considered that eight separate aspects of the evidence had undermined DM's evidence [24]. However, of these, only four were of substance [25-26], and each of those had been expressly taken into account by the Lord Ordinary in reaching his conclusion on DM's credibility [27].
- In a case such as the present one, in which the trial judge is faced with a stark choice between irreconcilable accounts, the credibility of the parties' testimony is of primary importance. In that regard, the Lord Ordinary found that DM was a credible witness on the central issue of whether the payment of £285,000 was a gift, notwithstanding a number of aspects of the evidence which could be regarded as detracting from his credibility [28, 30]. The question whether DM's evidence was to be regarded as credible and reliable, having regard to the other evidence in the case, was pre-eminently a matter for the Lord Ordinary [28].
- Further, the Inner House did not consider the weight of the evidence adverse to DM's credibility in the context of the evidence as a whole. They did not appear to have given any weight to the extent to which the Lord Ordinary's conclusion was affected by the manner in which the witnesses gave evidence, which the Inner House could not have assessed for themselves from the printed record. They did not consider the Lord Ordinary's assessment of the character of the witnesses or the unchallenged finding that RM had acted in breach of trust in relation to the St Helens Gardens property. They also did not scrutinise the evidence of RM or LG in the same way they did that of DM [29].
- It was not correct for the Inner House to rely on the case of *Hamilton v Allied Domecq plc* [2007] UKHL 33, in which a critical finding of fact had been made which was unsupported by the evidence. That was not the position in the present case [31].
- Finally, in relation to the issues raised on the appeal, the Lord Ordinary's assessment that the evidence of the Respondents' son added little or nothing on the basis that he largely recounted what he had been told by his parents, was borne out by the relevant passages of the evidence. The Lord Ordinary did not therefore err in failing to give greater weight to that evidence [32].
- In the whole circumstances, therefore, the Inner House had no proper basis for concluding that the Lord Ordinary had gone plainly wrong, let alone that on a re-consideration of the whole evidence the opposite conclusion should be reached [33].
- While the case concerned the application of long settled legal principles, the Court does not criticise the bringing of the appeal. The failure of an appellate court to apply those principles correctly may raise a point of law of general public importance [35].

28 January 2015

McGraddie (Appellant) v McGraddie and another (Respondents) (Scotland) (Costs)
[2015] UKSC 1
On appeal from [2012] CSIH 23

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Reed

BACKGROUND TO THE JUDGMENT

This appeal concerns a dispute between a father, (“the Pursuer”) and son (“the First Defender”). The Pursuer gave the First Defender a cheque for £285,000. The First Defender and his wife used £200,000 to purchase a house in their own names for £285,000, the balance being raised by way of mortgage. The parties fell out and the Pursuer began proceedings seeking the conveyance of the house to him on the ground that the £285,000 had been paid to the First Defender to buy a property for the Pursuer.

The Lord Ordinary rejected the Defenders’ case that the £285,000 was a gift and granted the Pursuer substantially the relief which he sought. The Defenders appealed and the Extra Division allowed the appeal. The Pursuer appealed and the Supreme Court allowed his appeal for reasons given in the judgment of Lord Reed (see [2013] UKSC 58), reinstating the Lord Ordinary’s decision.

The Defenders were legally aided in the Inner House and in the Supreme Court, but the Pursuer was not. The Pursuer took out After the Event Insurance (“ATE insurance”) against his potential liability for the Defenders’ costs if he were to lose his appeal to the Supreme Court and was subsequently ordered to pay the Defenders’ costs. The premium which the Pursuer paid for the ATE insurance was £40,000. The Pursuer seeks an order that the Legal Aid Board (“the Board”) pay his expenses. The relevant statutory provisions enable the court to make an award in relation to “the whole or any part of any expenses incurred by [a legally unassisted party] so far as attributable to any part of the proceedings in connection with which another party was a legally assisted person”. The Court can make such an order in relation to the expenses of an appeal if “an order for expenses might be made in the proceedings, apart from this Act” and “the court is satisfied that it is just and equitable in all the circumstances that the award should be paid out of public funds”. The Pursuer contends that the £40,000 ATE premium should be recoverable from the Board as part of his expenses.

JUDGMENT

In a judgment given by Lord Neuberger, the Supreme Court unanimously awards the Pursuer his expenses of the appeal to the Inner House and to the Supreme Court against the Legal Aid Board, but directs that those expenses should not include the ATE premium of £40,000 paid by the Pursuer.

REASONS FOR THE JUDGMENT

The relevant provisions of the Supreme Court Rules and Practice Direction 13, and the Rules of the Court of Session allow expenses which are reasonably incurred. It is clear that the ATE premium was reasonably incurred [10-11]. However, the question remains whether an ATE premium is an item of expenses which is recoverable from the other party. In the absence of any express provision permitting it, one would not expect an ATE premium to be recoverable as it is simply not part of the costs of the appeal as a matter of ordinary language [12-13]. The same can be said of the language of the Scottish Rules of Court [16]. This position is confirmed by both English and Scottish authority [17-18]. This leads to the conclusion that, in the absence of agreement or a specific statutory sanction (either expressly or through valid delegated legislation) to the contrary, a successful party to litigation cannot recover an ATE premium, however reasonable it was to have incurred it, as part of his costs or expenses of legal proceedings [19].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://www.supremecourt.uk/decided-cases/index.html>